

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

Weiskopf
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FILE: B-208605.2

DATE: November 22, 1982

MATTER OF: Blue Ridge Security Guard Service, Inc.

DIGEST:

1. Protest of alleged IFB ambiguity apparent prior to bid opening is untimely where filed after bid opening.
2. Bidders rely on oral advice at their own risk where IFB advises that oral explanations or instructions given before award will not be binding.

Blue Ridge Security Guard Service, Inc. has filed a protest after bid opening complaining that invitation for bids (IFB) No. MDA903-83-B-0002, issued by the Army's Defense Supply Service-Washington, was ambiguous. We dismiss the protest as untimely.

The IFB solicited bids to provide guard services at the Uniformed Services University of Health Sciences (USUHS). The IFB described the contractor's duties and included a Department of Labor wage determination describing two classifications of guards and stipulating a different minimum hourly wage rate for each classification. The protester contends that it was not clear which rate should apply to the guard services described in the IFB. In addition, Blue Ridge alleges it based its bid, which was not low, on the more costly classification because a USUHS official had advised it the more costly classification applied to this acquisition, whereas other bids are too low to have been computed using the higher rate. In the protester's view, the IFB should have stated clearly which classification of guards the agency required.

Our Bid Protest Procedures require that protests based upon alleged improprieties in an IFB which are apparent prior to bid opening must be filed before that date. 4 C.F.R. § 21.1(b)(1)(1982). The alleged ambiguity was apparent prior to bid opening, and since the protester did not file a protest until after bid opening, we will not consider the merits of the protest.

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We recognize the protester had allegedly requested clarification of the matter from USUHS before bid opening and a USUHS official responded orally that the more costly classification applied to this acquisition. Nonetheless, we also note the protester concedes that the contracting officer expressly declined to issue an amendment to the IFB stating that the more costly guard classification applied to the contract effort. Moreover, the IFB (in paragraph 3 of Standard Form 33-A) specifically required that any explanation regarding the meaning or interpretation of the solicitation be requested in writing and with sufficient time allowed for a reply to reach bidders before the submission of bids. It also expressly warned bidders that oral explanations or instructions would not be binding. In this regard, we frequently have held that bidders rely on oral advice at their own risk. Aardvark/Keith Moving Company, B-200680, March 6, 1981, 81-1 CPD 180. The alleged oral advice to Blue Ridge thus provides no basis for us to consider the untimely protest on the merits.

Concerning the protester's contention that some bidders did not compute their prices on the basis of the higher wage rate, we regard that contention as speculative. The protester has not submitted evidence to show any bidder that offered a lower price than Blue Ridge in fact utilized the lower rate. Instead, Blue Ridge bases its contention on its belief that the IFB was ambiguous. We therefore will not consider the matter further.

We note with concern, however, the agency's position that each bidder had the responsibility of selecting which classification of guards would apply to the personnel it would employ to meet the IFB's requirements. Our concern is that in cases where it is not clear which classification applies to required guard services, bidders may reach different conclusions and thus not bid on the same basis. Although the agency contends that only the bidder can determine what mix of guards it will require to meet the contract requirements, the IFB here listed uniform requirements for all contractor personnel except the shift supervisor. Therefore, the potential bidder did not have to determine a mix of guard categories; it had only to determine which classification to apply to all its guards, and that determination of course would affect the bid price. Moreover, since the Department of Labor ultimately has authority to review the payments to service employees under the contract and to determine whether the contractor applied the correct rate, the successful bidder also must bear the risk that the Department ultimately will disagree with the contractor's rate.

To eliminate confusion and to promote competition, we think that where a reasonable question might arise from the specifications concerning the appropriate classification but the agency can determine that its minimum needs mandate guards of a particular class, the agency should include a statement in the IFB expressly requiring guards of that class. See Transco Security, Inc. of Ohio, B-197177, May 29, 1980, 80-1 CPD 371. Further, if the agency is unsure of which classification would apply, it could consult the Wage and Hour Division of the Department of Labor, which is responsible for determining compliance with the wage classifications, for guidance. We are advising the Army of our views.

The protest is dismissed.

Harry R. Van Cleve

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Acting General Counsel